

Iowa Judicial Branch
Digital Audio Recording Technology (DART) Committee
Notes from the 1st Meeting*
May 21, 2009; Des Moines

Attendance: All committee members attended, except Chief Judge Kurt Wilke (presiding at a jury trial). Also attending were Chief Justice Marsha Ternus (for the first half-hour only) and from State Court Administration: John Goerdts and Steve Davis.

1. Welcome and introductions.

The meeting began at 9:30 AM. The committee's co-chairs, Chief Judge Charles Smith and Beth Baldwin, welcomed the committee and invited members to introduce themselves, which they proceeded to do.

2. Summary of the Remarks by Chief Justice Marsha Ternus

The Chief Justice thanked members for contributing their time to this committee. She explained that the idea to use DART to make the official court record was suggested several months ago as the magnitude of the national economic crisis and the state's budget crisis became increasingly apparent. By the start of 2009, the judicial branch was expecting to face unprecedented budget cuts in FY 2010 – up to \$15 million – almost 10 percent of our operating budget. Given the potential severity of the cuts, and as responsible stewards of state resources, state court administrators and the judicial council felt compelled to seriously consider every reasonable cost-saving idea. The proposal to use DART in our courtrooms was -- and continues to be -- just one of a wide range of options for reducing costs if we continue to face budget cuts in the future.

According to the Chief Justice, the purpose of this committee is to perform the first crucial step in the analysis of DART: to determine whether this technology can reliably produce an accurate record of court proceedings. This is a narrowly focused objective. If the committee concludes that DART meets this requirement, the judicial branch will still have to consider the needs of judges for clerical and administrative support and whether the benefits of DART outweigh the overall costs.

Committee members have been chosen for this important assignment because each has a unique perspective to bring to bear on this issue. Members are not here to advocate for the interests of any particular group. Instead, each member is here for the same purpose: to objectively consider the evidence on the reliability of DART for producing an accurate record of court proceedings. We are confident that the committee can achieve this goal on behalf of the citizens we serve.

3. Review of DART materials provided to the committee (John Goerdts, Deputy State Court Administrator)

The folder of materials given to committee members includes 13 documents. Most are reports, manuals, or instructions developed by other states and the federal courts on some aspect of DART in the courts. They were obtained as part of the research effort to determine whether there was a reasonable basis to believe that DART is a reliable means to produce an accurate court record. The various reports and other documents could

guide similar efforts in Iowa, if the committee concludes that DART meets these basic requirements. Also included is a report from the California Official Court Reporters' Association (see Tab 11), which delineates many of the arguments against the use of DART in lieu of court reporters. The documents include:

- **Tab 1:** The supreme court's order creating the committee
- **Tab 2:** A list of committee members with contact information
- **Tab 3:** Summary table on the use of DART in state and federal courts (2009); the information in this table is based on a variety of sources including a search of the internet; use of email list-serves involving court managers; and phone calls to various state courts.
- **Tab 4:** Executive summary of an evaluation of DART in 12 federal courts (1999)
- **Tab 5:** Memo summarizing current use of DART in federal courts (March 2009)
- **Tab 6:** Answers to FAQs about DART in the federal bankruptcy court in New Mexico (2004)
- **Tab 7:** Michigan's Standards for Audio Recording Systems in the Courts (2007)
- **Tab 8:** Wisconsin's Policy and Procedures Manual on Digital Audio Recording of Court Proceedings (2006)
- **Tab 9:** Arizona's Instructions for Judges, Lawyers, and Other Court Participants Regarding Electronic Recording Systems in the Courtroom (2005)
- **Tab 10:** Final Report of the Oregon Judicial Department's Workgroup on Qualifications for Transcriptionists (2007)
- **Tab 11:** California Official Court Reporters' Association: Preserving Access to Justice Task Force Final Report (2009) [This is the source quoted most often for arguments against using DART for court proceedings.]
- **Tab 12:** Iowa Code and Court Rules on Reporting/Recording Requirements for Court Proceedings (a summary of the Code sections and Court Rules on this issue; 2009)
- **Tab 13:** Proposed "Request for Information" (RFI) – to solicit information from vendors regarding digital audio/visual recording equipment and software

At the end of the overview of these materials, committee member Gerald Olson distributed a letter to the other committee members in which he expressed his views on the important role of court reporters. He indicated that it should be read by members at some other time and should not be the focus of discussion at this meeting.

4. **Discussion on allowing the news media to attend this committee's meetings**

One of the chairs asked the committee to adopt a policy on whether to permit the news media to attend the committee meetings. As an advisory group to the judicial council on administrative matters, the committee is not subject to the requirements of the open meetings law. Members agreed, however, that transparency in this process would contribute to the legitimacy of the committee's final recommendations. Members unanimously agreed to open future committee meetings to the public and news media.

5. **Discussion of the “Proposed DART Committee Tasks & Timeline”** (handout)

Prior to this meeting, the committee co-chairs and staff discussed the tasks this committee would probably need to perform to meet the December 31st deadline for submitting a final report and recommendations to the judicial council. The handout includes their initial proposal for tasks and dates when they would need to be completed. As discussion of the tasks and timeline progressed, the committee decided the following:

- a. *Testing of DART in multiple courtrooms in Iowa.* Actual testing of various vendors’ DART systems in Iowa courtrooms should begin in August, rather than October 1 (as suggested on the Proposed Tasks & Timeline) to provide a longer test period. These tests are a crucial part of the evaluation process; we need more than one month to effectively test DART in multiple settings. Starting the test sites earlier means other key tasks must be completed sooner.
- b. *Request for information from DART vendors/manufacturers*
 - i. Committee staff should distribute the “request for information” (RFI; see Tab 13 in materials) as soon as possible; the deadline for responding to the RFI should be approximately 21 days later. The RFI should solicit information and demonstrations on digital video as well as audio recording technology. (Note: Committee staff emailed the RFI to DART vendors and posted it on the judicial branch website on May 21; the deadline for RFI responses is June 11.)
 - ii. **RFI Subcommittee:** A subcommittee will review the responses to the RFI and recommend three or four vendors/manufacturers to conduct demonstrations for the committee. The subcommittee will include: Judge Amanda Potterfield, Judge Bill Pattinson, Beth Baldwin, Esther Dean, Scott Ruhnke, and John Goerd.
- c. *Demonstrations by DART vendors.* The live demonstrations should be conducted at the Judicial Branch Building on Friday, June 26 (rather than July 31); this will be the second meeting of the committee. (Note: Committee staff confirmed the availability of the auditorium and two courtrooms on June 26 for purposes of the demonstrations.)
- d. *Site visits to other states using DART.*
 - i. By not later than July 15, committee staff should arrange site visits by subgroups of the committee to jurisdictions in nearby states that are already using DART. Staff will disseminate information about the sites and arrangements to the members via email and allow members to choose which sites they would visit.
 - ii. Each site visit should include observation of court proceedings, plus discussions with judges, attorneys, and court staff that have experience in using the technology -- and with judges and attorneys who have experience with the transcripts obtained from audio/visual recordings.
 - iii. Likely site visit locations include state courts in Minnesota (Minneapolis and possibly others); Rock Island, IL; Fargo, ND; and the federal district

court in Lincoln, NE. There was also significant interest in a small group visiting Salt Lake City, UT. Committee staff will explore the availability of funds for such a site visit. A phone conference with judges, attorneys, and court staff in Utah might be an alternative.

- e. *Evaluation of the DART in multiple courtrooms* (see 5.a., above).
 - i. **DART Evaluation Subcommittee**: After considerable discussion of how to evaluate the courtroom testing of DART in Iowa, the committee agreed to appoint a subcommittee to recommend (1) where the tests should occur and (2) a protocol for evaluating: (a) the reliability of DART and (b) the accuracy of the transcripts obtained from digital audio or video recordings.
 - ii. The subcommittee will include: Judge Bill Pattinson, Judge Lucy Gamon, Guy Cook, Darin Raymond, Mary Tabor, Martha Lucey, Gerald Olson, Scott Hand, and Scott Ruhnke.
 - iii. A member recommended that committee staff contact states that use DART to determine whether they have conducted a similar evaluation of this technology. If evaluations have been done, staff should obtain any pertinent reports or information about those evaluations.
 - f. *Need for training judges, attorneys, and court staff in DART test sites*. One member observed that the first few weeks of the testing of DART will be problematic until the judges, court staff, and attorneys are used to conducting proceedings in courtrooms relying on DART to obtain the record. The vendors who install their equipment for the test period will have to train judges and staff on the use of their systems before the test period begins. We will also have to inform attorneys – through handouts, signs, and pre-hearing instructions from the judges – regarding how to conduct themselves in proceedings where DART systems are being used to record the proceedings.
 - g. *Updated list of tasks and timeline*. Committee staff will update the tasks and timeline in accordance with the decisions made at this meeting and send the update to committee members with the meeting notes.
- 6. Next meeting: Friday, June 26, at 9:30 AM in D.M. (vendor demonstrations)
 - 7. Meeting adjourned at 11:55 AM

*These meeting “notes” are a summary of the main issues discussed and decisions made by the committee. They are not a verbatim record of the meeting.